

## USER'S GUIDE TO THE HERNDON ZONING ORDINANCE

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### 34. Chesapeake Bay Provisions for Homeowners: Step by Step Approval Process for Single-Family Detached and Duplex Dwellings

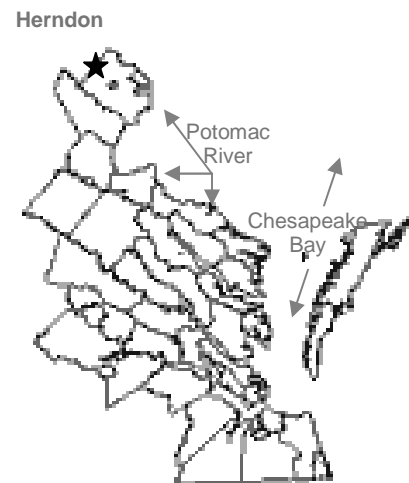
(See Zoning Ordinance §78-304.4, *Chesapeake Bay Preservation Area Overlay District*)

*The Town of Herndon Zoning Ordinance User Guide series provides the public with general information on land use regulations affecting activities undertaken by the public and administered by the Herndon Department of Community Development. It is not intended to be a complete statement of all applicable regulations. Individuals are encouraged to contact the Department of Community Development at 703-787-7380 for complete permitting requirements.*

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Many lots along streams in the Town of Herndon may have a zoning designation called the "Chesapeake Bay Preservation Area Overlay District." Special zoning regulations apply to those lots. If the owner or tenant is contemplating any property improvements on such a lot, the owner or tenant should ascertain whether or not there may be "Resource Protection Area" (RPA) on the property by visiting the Department of Community Development, consulting the Chesapeake Bay Preservation Areas Map as adopted by the Town Council, and conferring with a Town planner. Prior to making any improvements, the owner or tenant likely will be required to complete a site specific delineation of the "Resource Protection Area" (RPA) and submit it to the Department of Community Development to identify restrictions on any proposed improvements.

The following scenarios are provided to assist the homeowner in determining how to obtain permission for the desired property improvements. However, the specific regulations in the Herndon Town Code, Zoning Ordinance §78-304.4 must be followed, regardless of the information provided below.



Tidewater, Virginia, as defined by the Virginia General Assembly

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### Need more information?

Have a question on the zoning map, zoning regulation, or the public hearing process? Call or make an appointment to see a member of the staff in the **Department of Community Development at 703-787-7380.**

Have a question regarding building permits or construction codes? Call or make an appointment to see the **Building Official at 703-435-6850.**

Visit the Town of Herndon on the web at [www.herndon-va.gov](http://www.herndon-va.gov) for the Zoning Ordinance User Guide series or to access the Town Code. Town offices are located at the Herndon Municipal Center at 777 Lynn Street, Herndon, Virginia, 20170.

### TOWN OF HERNDON

Enriching the Quality of Life and Promoting a Sense of Community

## STEP BY STEP APPROVAL PROCESS

The following pages describe the procedures for several lot improvement scenarios for lots that contain single-family detached or duplex dwellings, and Resource Protection Areas (RPA) as described in Town Zoning Provisions for Chesapeake Bay Preservation Areas, Herndon Town Code § 78-304.4.

PLEASE CHOOSE A SCENARIO THAT MATCHES YOUR PLANS TO IMPROVE YOUR PROPERTY  
AND TURN TO THAT SCENARIO ON THE FOLLOWING PAGES

- Scenario A.** Patios, Fences, Gardens and Other Land Disturbance of less than 2,500 sf on lots in the RPA
- Scenario B.** Construction of a Private Road or Driveway
- Scenario C.** Activity that Does Not Encroach on the RPA [*all instances require a RPA Permit and a Building Permit, at minimum*]
- scenario C1.** Constructing a deck of any size or an addition of less than 150 square feet
  - scenario C2.** Constructing an addition or accessory structure when the footprint is 150 square feet to 749 square feet
  - scenario C3.** Constructing an addition or accessory structure when the footprint is 750 square feet or more
  - scenario C4.** Disturbing a land area of 2,500 square feet or more
- Scenario D.** Activity that Encroaches on the RPA and the Lot was Recorded Prior to February 10, 2004 [*all instances require a RPA Permit with review and approval by the Zoning Administrator for a CBPA Administrative Waiver*]
- scenario D1.** Constructing a deck of any size or an addition of less than 150 square feet
  - scenario D2.** Constructing an addition when the footprint is 150 square feet to 759 square feet
  - scenario D3.** Constructing an addition when the footprint is 750 square feet or more
  - scenario D4.** Constructing an accessory structure
  - scenario D5:** Disturbing a land area of 2,500 square feet or more
- Scenario E.** Activity that Encroaches on the RPA and the Lot was Recorded After February 10, 2004 [*all instances require a Town Council public hearing for a CBPA Exception*]
- scenario E1.** Constructing a deck of any size or an addition of less than 150 square feet
  - scenario E2.** Constructing an addition when the footprint is 150 square feet to 749 square feet
  - scenario E3.** Constructing an addition when the footprint if 750 square feet or more
  - scenario E4.** Constructing an accessory structure
  - scenario E5.** Disturbing a land area of 2,500 square feet or more.
- Scenario F.** Retaining walls With Land Disturbance of less than 2,500 Square Feet (per building code)

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- REFERENCE 1:** Site Specific RPA Delineation Submittal Requirements  
**REFERENCE 2:** Water Quality Criteria Used to Evaluate Most Scenarios  
**REFERENCE 3:** Requirements for Submittal of a Water Quality Impact Assessment (WQIA)  
**REFERENCE 4:** Required Approvals for Development Proposed on Individual Lots Zoned for Single-Family Use (Detached or Duplex Homes) that Contain Zoning for Resource Protection Areas

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**Scenario A. Patios, Fences, Gardens and Other Land Disturbance of less than 2,500 square feet on lots in the RPA**

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*If the activity will involve 2,500 square feet or more of land disturbance, please see Scenario C4, D4, or E4. For activities of less than 2,500 square feet of land disturbance, the following guidance applies.*

#### Guidance

1. Vegetation in the RPA should slow stormwater runoff, prevent erosion, and filter any pollution picked up by the stormwater as it drains. The best way to achieve these objectives is by providing a mixture of vegetation, including, trees, under story shrubs and groundcover through which the stormwater may flow.
2. Homeowners are encouraged to convert open land in the RPA, such as lawn, into an effective vegetative buffer, such as a forest or native grasses that are not mowed. Homeowners should contact the Herndon Department of Community Development (703-787-7380) or consult the Virginia Riparian Buffers Modification and Mitigation Guidance Manual, (<http://www.cbld.state.va.us/publica.cfm> and 1-800-CHESBAY) developed by the Virginia Chesapeake Bay Local Assistance Department, for appropriate plant materials and maintenance.

#### Regulations

1. Patios and detached decks are prohibited.
2. Fences are permitted as long as
  - a. use of vegetation is considered as a first choice to establish privacy screening or a yard enclosure;
  - b. no significant vegetation is removed;
  - c. encroachment into the RPA is minimized;
  - a. the fence or wall is constructed in a way that does not adversely affect drainage or degrade water quality.
3. The use of fertilizers, herbicides or pesticides shall be minimized in the RPA.
4. A homeowner may remove vegetation in the RPA only if it is for reasonable sight lines, access paths, general woodlot management, or for the control of erosion or concentrated stormwater drainage. The Zoning Administrator must review and approve any proposal to remove vegetation.
5. If no significant vegetation is being removed, home gardening is allowed in the RPA without prior permission because it is considered a minor land disturbing activity. Please call the Department of Community Development at 703-787-7380 if you have questions about what constitutes a "minor" land disturbing activity.

#### Submission Requirements for Vegetation Removal in the RPA

Homeowner must file an application with the Department of Community Development for a RPA Permit, which includes a site specific delineation of the RPA and a minor Water Quality Impact Assessment (WQIA.) See at the end of this document "Reference 1. Site Specific RPA

Delineation Submittal Requirements” and “Reference 3. Requirements for Submittal of a Water Quality Impact Assessment (WQIA).”

#### Staff Review

1. The Community Forester conducts a field visit and verifies the site specific RPA delineation and WQIA information, such as wetlands and existing vegetation.
2. Zoning staff reviews the information and determines if it meets the following criteria (§78-304.4(j)(3)):
  - a. Vegetation may be removed or pruned in the RPA only for reasonable sight lines, access paths, general woodlot management, and for the control of erosion or concentrated stormwater drainage.
  - b. Where trees are removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff.
  - c. Any path shall be constructed and surfaced to control erosion effectively.
  - d. Dead, diseased or dying trees or shrubbery and noxious weeds may be removed and thinning of trees may be allowed pursuant to sound horticulture practice, as prescribed by the Town’s Community Forester.
  - e. Use of fertilizers, herbicides or pesticides are avoided or minimized in the buffer area.
3. If the proposal meets the criteria in item 2 above, staff approves the application and provides the homeowner with a RPA permit.
4. If the proposal does not meet the criteria in item #2 above, staff disapproves the application and invites the homeowner to revise the application to meet the requirements and resubmit it.
5. Once a homeowner receives a RPA permit, work may begin.

#### **Scenario B. Construction of a Private Road or Driveway**

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Roads and driveways may be constructed in or across the RPA, provided they meet certain criteria.

#### Submission Requirements

1. The homeowner must file an application with the Department of Community Development for a RPA Permit, which includes a site specific delineation of the RPA and a minor Water Quality Impact Assessment (WQIA.) See at the end of this document “Reference 1. Site Specific RPA Delineation Submittal Requirements” and “Reference 3. Requirements for Submittal of a Water Quality Impact Assessment (WQIA).”

2. If the proposed driveway intersects a public right-of-way, the homeowner also must submit a separate application for a right-of-way permit to the Department of Public Works. The application must be obtained directly from the Department of Public Works.
3. All requirements in Scenario A above apply to the removal of vegetation for construction of the driveway.

#### Staff Review

1. If the proposed driveway intersects a public right-of-way, the homeowner's application for a right-of-way permit is received by the Department of Public Works which routes information to the Department of Community Development. While Public Works reviews the right-of-way permit, the Community Forester conducts a field visit and verifies the site specific RPA delineation and the WQIA information, such as the RPA buffer limits, wetlands and the existing vegetation.
2. Zoning staff reviews the information and determines if it meets the following criteria (§ 78-304.4(j)(5)).
  - a. There are no reasonable alternatives to aligning the road or driveway in or across the RPA;
  - b. The alignment and design of the road or driveway minimize (i) encroachment in the RPA and (ii) adverse effects on water quality;
  - c. The design and construction of the road or driveway satisfy all applicable criteria of § 78-304.4 of the Herndon Zoning Ordinance, including the submission and approval of a WQIA;
  - d. Application meets other applicable zoning requirements, such as impervious surface and lot coverage requirements; and
  - e. The review of the road or driveway is coordinated with the review process for a Site Plan or subdivision, if applicable.
3. If the above criteria are met, the zoning staff approves the application, and Community Development issues a RPA Permit. This information is coordinated with Public Works for the issuance of a right-of-way permit (if applicable.) If the proposal is disapproved, staff informs the homeowner why it was disapproved.
4. Homeowner picks up approved plans, revises plans based on comments, or does not pursue project.
5. After RPA permit and right-of-way permit issuance, construction may commence.

#### **Scenario C. Activity that Does Not Encroach on the RPA**

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*All instances require an application for a RPA Permit with a site specific RPA delineation and a separate application for a Building Permit.*

**scenario C1.** Constructing a deck of any size or an addition of less than 150 square feet: (a) The applicant must apply to the Department of Public Works for a Building Permit. (b) Prior to approval of the Building Permit, the applicant must apply to the Department of Community Development for a RPA Permit and submit a site specific RPA delineation. (c) If the lot is in the Town's Heritage Preservation Overlay District, and prior to approval of the Building Permit, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement.

**scenario C2.** Constructing an addition or accessory structure when the footprint is 150 square feet to 749 square feet: (a) The applicant must apply to the Department of Public Works for a Building Permit. (b) Prior to approval of the Building Permit, the applicant must apply to the Department of Community Development for a RPA Permit and submit a site specific RPA delineation. (c) Prior to approval of the Building Permit, the applicant must apply to the Department of Community Development for review and approval of a Building Location Survey. (d) If the lot is in the Town's Heritage Preservation Overlay District, and prior to approval of the Building Permit, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement.

**scenario C3.** Constructing an addition or accessory structure when the footprint is 750 square feet or more: (a) The applicant must apply to the Department of Public Works for a Building Permit. (b) Prior to acceptance of the Building Permit, DPW staff will refer the applicant to the Department of Community Development to apply for a Single Lot Development Plan. (c) Concurrent with the application for a Single Lot Development Plan, the applicant must apply to the Department of Community Development for review and approval of a RPA Permit and a site specific RPA delineation. (d) If the lot is in the Town's Heritage Preservation Overlay District, and prior to issuance of a Building Permit, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement.

**scenario C4.** Disturbing a land area of 2,500 square feet or more: (a) The applicant must apply to the Department of Community Development for a RPA Permit and submit a site specific RPA delineation. (b) The applicant must apply to the Department of Community Development for review and approval of a Single Lot Development Plan. This application includes a plan for erosion and sedimentation that comes under review by the Department of Public Works for appropriate controls for stormwater.

**Scenario D. Activity that Encroaches on the RPA and the Lot was Recorded Prior to February 10, 2004**

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*All instances require a RPA Permit with review and approval by the Zoning Administrator for a CBPA Administrative Waiver.*

**scenario D1. Constructing a deck of any size or an addition of less than 150 square feet:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a CBPA Administrative Waiver. (b) If the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (c) The applicant must apply to the Department of Public Works for a Building Permit.

**scenario D2. Constructing an addition when the footprint is 150 square feet to 749 square feet:** (a) The applicant must apply to the Department of Public Works for a Building Permit. (b) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a CBPA Administrative Waiver. (c) The applicant must apply to the Department of Community Development for review and approval of a Building Location Survey. (d) If the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (e) The applicant must apply to the Department of Public Works for a Building Permit.

**scenario D3. Constructing an addition when the footprint is 750 square feet or more:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a CBPA Administrative Waiver. (b) The applicant must apply to the Department of Community Development for review and approval of a Single Lot Development Plan. (d) If the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (e) The applicant must apply to the Department of Public Works for a Building Permit.

**scenario D4. Constructing an accessory structure.** Accessory structures are not allowed in the RPA. However, an Exception may be granted formally by the Town Council at a public hearing upon meeting certain criteria as shown in Section 78-304.4(l) of the Zoning Ordinance. To submit a request for Town Council consideration of an Exception, the applicant must submit a site specific RPA delineation. If the footprint of the proposed accessory structure is 150 to 749 square feet in area, the applicant also must submit an application for review and approval of a building location survey. If the footprint of the proposed accessory structure is 750 square feet or more in area, the applicant must submit an application for review and approval of a single lot development plan. A building permit and Heritage Preservation review may be needed as described in scenarios D2 and D3 above.

**scenario D5: Disturbing a land area of 2,500 square feet or more:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a CBPA Administrative Waiver. (b) The applicant must apply to the Department of Community Development for review and approval of a single lot development plan. This application includes a plan for erosion and sedimentation that comes under

review by the Department of Public Works for appropriate controls for stormwater.

**Scenario E. Activity that Encroaches on the RPA and the Lot was Recorded After February 10, 2004**

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*all instances require a Town Council public hearing for a CBPA Exception*

**scenario E1. Constructing a deck of any size or an addition of less than 150 square feet:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a public hearing with the Town Council for a CBPA Exception. (b) If the Town Council approves the CBPA Exception and if the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (b) If the Town Council approves the CBPA Exception, the applicant may and must apply to the Department of Public Works for a building permit.

**scenario E2. Constructing an addition when the footprint is 150 square feet to 749 square feet:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a public hearing with the Town Council for a CBPA Exception. (b) The applicant must apply to the Department of Community Development for review and approval of a building location survey. (c) If the Town Council approves the CBPA Exception and if the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (d) If the Town Council approves the CBPA Exception, the applicant may and must apply to the Department of Public Works for a building permit.

**scenario E3. Constructing an addition when the footprint if 750 square feet or more:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a public hearing with the Town Council for a CBPA Exception. (b) The applicant must apply to the Department of Community Development for review and approval of a single lot development plan. (c) If the Town Council approves the CBPA Exception and if the lot is in the Town's Heritage Preservation Overlay District, the applicant must apply to the Department of Community Development for review and consideration of the by the Heritage Preservation Review Board for approval of the proposed improvement. (d) If the Town Council approves the CBPA Exception, the applicant may and must apply to the Department of Public Works for a building permit.

**scenario E4. Constructing an accessory structure.** Accessory structures are not allowed in the RPA. However, an Exception may be granted formally by the Town Council at a public hearing upon meeting certain criteria as shown in Section 78-304.4(l) of the Zoning Ordinance. To submit a request for Town Council consideration of an Exception, the applicant must submit a site specific RPA



delineation. If the footprint of the proposed accessory structure is 150 to 749 square feet in area, the applicant also must submit an application for review and approval of a building location survey. If the footprint of the proposed accessory structure is 750 square feet or more in area, the applicant must submit an application for review and approval of a single lot development plan. A building permit and Heritage Preservation review may be needed as described in scenarios E2 and E3 above.

**Scenario E5: Disturbing a land area of 2,500 square feet or more:** (a) The applicant must apply to the Department of Community Development for a RPA Permit, submit a site specific RPA delineation, and request a public hearing with the Town Council for a CBPA Exception. (b) The applicant must apply to the Department of Community Development for review and approval of a single lot development plan. This application includes a plan for erosion and sedimentation that comes under review by the Department of Public Works for appropriate controls for stormwater.

#### **Scenario F. Retaining Walls With Land Disturbance of less than 2,500 Square Feet (per building code)**

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Retaining walls can present good solutions to difficult site situations. However, retaining walls alter drainage patterns and the flow of stormwater. The Town's review is required to ensure the safety and structural integrity of the retaining wall as well as the proper flow of drainage. The retaining wall must not create adverse effects on the Resource Protection Area buffer or on adjoining properties.

##### **Submission Requirements**

1. The owner is required to submit to the Department of Public Works a building permit application accompanied by drawings of the proposed structure.
2. The homeowner simultaneously must file an application with the Department of Community Development for a RPA Permit, which includes a site specific delineation of the RPA. See at the end of this document "Reference 1. Site Specific RPA Delineation Submittal Requirements."

##### **Staff Review**

1. The Department of Public Works, and the Department of Community Development coordinate the review of the respective applications.
2. While Building Inspections reviews the building permit application, the Community Forester conducts a field visit and verifies the site specific RPA delineation information. If the proposed structure is found to be inside the RPA, the applicant will be asked to provide a minor WQIA. See at the end of this document "Reference 3. Requirements for Submittal of a Water Quality Impact Assessment (WQIA)."
3. After submittal of the WQIA, if required, the Community Forester conducts a field visit and verifies the WQIA information, such as the RPA buffer limits, wetlands and the existing vegetation.

4. The Community Forester and the Zoning Administrator determine whether or not the construction of the proposed retaining wall meets the following criteria:
  - a. No more land is disturbed than necessary to provide for the proposed structure (§78-304.4(i)(3)).
  - b. Indigenous vegetation is preserved to the maximum extent practicable for the proposed structure. All trees located outside the area of land disturbance with a DBH of four inches or more are preserved (§78-304.4(i)(4)).
  - c. Clearing within the area of land disturbance is limited to that necessary to provide for the structure a single access during construction, positive drainage and water quality devices (if any) (§78-304.4(i)(4)).
3. If the above criteria are met, the zoning staff approves the application, and Community Development issues a RPA Permit. This information is coordinated with Public Works for the issuance of a building permit. If the proposal is disapproved, staff informs the homeowner why it was disapproved.
4. Homeowner picks up approved plans, revises plan based on comments, or does not pursue project.
5. After building and RPA permit issuance, construction may commence.

**Reference 1: Site Specific RPA Delineation Submittal Requirements [§78-304.4(e) of the Herndon Town Code]**

- (a) As part of any land disturbance, development or redevelopment in the RPA, a site-specific RPA delineation shall be required. The "Chesapeake Bay Preservation Areas" map, adopted by the Town Council on February 10, 2004, as amended, may be used as a guide to identify the general location of resource protection areas.
- (b) For land disturbance in the RPA that is **no more than 5,000 square feet**, the site-specific RPA delineation shall include a scaled drawing of the property that:
1. Delineates nontidal wetlands connected by surface flow and contiguous to water bodies with perennial flow;
  2. Delineates an 100-foot buffer area that is shown (a) along each side of any water body with perennial flow and (b) adjacent to and landward of nontidal wetlands as described in (1) above; and
  3. Identifies other sensitive environmental features, as determined by the Zoning Administrator.
- (c) For land disturbance in the RPA that **exceeds 5,000 square feet**, the following requirements shall be met:
1. RPA boundary delineation studies shall be sealed by a professional engineer, land surveyor, landscape architect, soil scientist or wetland delineator certified or licensed to practice in the Commonwealth of Virginia. Any work performed by other firms or individuals not under the responsible charge of the licensed professional sealing the study shall be identified and sealed by that individual, as appropriate;
  2. Wetland determinations used in the RPA delineation shall be performed using methods specified by the U.S. Army Corps of Engineers (USACE), and a copy of the USACE's Jurisdictional Determination approving the wetlands delineation shall be provided;
  3. RPA boundary delineation studies shall be submitted on standard-size sheets of 24" × 36" at a scale of 1" = 50' or larger; and
  4. Site-specific RPA delineation shall include the following:
    - a. Cover sheet with project name, town plan identification number, vicinity map, tax map reference number and fee computation;
    - b. A narrative describing how the proposed RPA boundary was established, including a discussion of which components determine this RPA boundary, and any wetland shown on the plan(s) that were determined not to be a component of the RPA;
    - c. Plan sheet(s) with two-foot contour interval topography showing each individual component of the RPA overlain to create the final RPA boundary, the RPA boundary from the adopted Chesapeake Bay Preservation Area map, locations of the horizontal and vertical control points, and locations of points and transects used in the wetland determination. Topography shall be correlated to a USGS or Town benchmark(s), based on NGVD29, which shall be referenced in the plan. Plan sheets shall include a north arrow.
    - d. Standard USACE data forms used in the wetland determination and the issued jurisdictional determination for the subject site.
    - e. A description of the methodology used and data collected, including standard data sheets, used to identify water bodies with perennial flow.
- In determining the site-specific RPA boundary, the Zoning Administrator may adjust the applicant's submitted boundary survey. In addition, the Zoning Administrator shall utilize the "Federal Manual for Identifying and Delineation Jurisdictional Wetlands," 1987, for determining wetlands location. In the event the applicant contests the adjusted boundary, the applicant may appeal the Zoning Administrator's decision, under §78-202.12, *Appeals from Certain Decisions and Determinations by the Zoning Administrator*.

## **Reference 2. Water Quality Criteria Used to Evaluate Most Scenarios**

- (a) Criteria to be used by the Zoning Administrator to evaluate requests for waivers from eligible sections of the ordinance other than the general performance criteria for land disturbance (found at Herndon Town Code § 78-304.4(m)(4)):
1. The request is the minimum necessary to afford relief; and
  2. The Zoning Administrator has the authority to place reasonable and appropriate conditions upon any waiver, as necessary, so that the purpose and intent of this article is preserved.
- (b) Criteria to be used by the Zoning Administrator to evaluate requests for waivers from general performance criteria for land disturbance (found at §78-304.4(m)(3)):
1. The request is the minimum necessary to afford relief;
  2. Granting the request does not confer upon the applicant any special privileges denied by this article to other property owners in the Chesapeake Bay Preservation Overlay District;
  3. The request is in harmony with the purpose and intent of this article and is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality;
  4. The request is not based upon conditions or circumstances that are self-created or self-imposed; and
  5. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.
- (c) Criteria to be used by the Town Council to evaluate requests for exceptions from certain permitted uses and additional performance criteria for resource protection areas (found at Herndon Town Code § 78-304.4(l)):
1. The requested CBPA exception is the minimum necessary to afford relief;
  2. Granting the CBPA exception does not confer upon the applicant any special privileges that are denied by §78-304.4(g), 78-304.4(i), and 78-304.4(j) to other property owners who are similarly situated;
  3. The request is in harmony with the purpose and intent of sections 78-304.4(g), 78-304.4(i), and 78-304.4(j) and is not of substantial detriment to water quality;
  4. The request is not based upon conditions or circumstances that are self-created or self-imposed;
  5. Reasonable and appropriate conditions are imposed, as warranted, that prevent the allowed activity from causing a degradation of water quality; and
  6. Other findings, as appropriate and required by the town are met.
- (d) Criteria to be used by the Zoning Administrator to evaluate requests for RPA encroachments (found at Herndon Town Code § 78-304.4(j)(7)):
1. If the requirements result in the loss of a buildable area for new homes or new principal structures on lots recorded before October 1, 1989, the Zoning Administrator may grant encroachments into the buffer area provided that:
    - a. The applicant submits an administrative waiver application, in accord with §78-304.4(m)(2), and the required water quality impact assessment (WQIA), receives Zoning Administrator approval;

- b. The encroachment into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  - c. Where practical, a vegetated area that maximizes water quality protection, mitigates the effects of the buffer encroachment, and equals the area of the buffer encroachment shall be established elsewhere on the lot; and
  - d. The encroachment may not extend into the buffer area that is 50 feet closest to the water body with perennial flow and/or its associated wetlands.
2. If the requirements result in the loss of a buildable area for new homes or new principal structures on lots recorded between October 1, 1989, and February 10, 2004, the Zoning Administrator may grant an encroachment into the buffer area provided that:
- a. The lot or parcel was created as a result of a process conducted in conformity with chapter 70, Subdivision of Land, of the Town of Herndon Code;
  - b. Conditions or mitigation measures imposed through a previously approved exception shall be met;
  - c. If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
  - d. The criteria in section 78-304.4(j)(7)a shall be met.
- (e) For land disturbance of less than 5,000 square feet, criteria to be used by the Zoning Administrator to evaluate a minor water quality impact assessment (from 78-304.7(k)(5)a):

Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed alteration or reduction to the buffer area is consistent with the provisions of this article and make a finding based upon the following criteria:

- a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
  - b. Impervious surface is minimized;
  - c. Proposed best management practices, where required, to achieve the requisite reductions in pollutant loadings;
  - d. The development, as proposed, meets the purpose and intent of this article; and
  - e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, shall not result in a significant degradation of water quality.
- (f) Criteria to be used by the Zoning Administrator to evaluate a major water quality impact assessment (WQIA) (from §78-304.4(k)(5)b): for land disturbance that exceeds 5,000 square feet or is otherwise determined to warrant a major WQIA

Upon the completed review of a major water impact assessment, the Zoning Administrator shall determine if the proposed development is consistent with the purpose and intent of this article and shall make findings based upon the following criteria:

- a. The proposed development is a permitted use;
- b. The disturbance of wetlands is minimized;
- c. The development does not result in significant disruption of the hydrology of the portion of CBPA on the site;

- d. The development does not result in significant degradation to aquatic vegetation of life in the portion of CBPA on the site;
- e. The development does not result in unnecessary destruction of plant materials in the portion of CBPA on the site;
- f. Proposed erosion and sediment control concepts are adequate to achieve the required reductions in runoff and prevent off-site sedimentation;
- g. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
- h. Proposed re-vegetation of disturbed areas provides required erosion and sediment control benefits;
- i. The development, as proposed, is consistent with the purpose and intent of the CBPA overlay district; and
- j. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, shall not result in a significant degradation of water quality.

<b>Reference 3: Requirements for Submittal of a Water Quality Impact Assessment under §78-304.4 of the Herndon Zoning Ordinance FOR USE BY PREPARERS and REGULATORY REVIEWERS</b>			
✓		Minor	Major
	<b>Four copies of site drawings that:</b>	✓	✓
	are drawn to scale	✓	✓
	are certified by a professional engineer or land surveyor as complete and accurate		✓
	include a WQIA cover sheet	✓	✓
	are accompanied by a Town application form filled out	✓	✓
	are accompanied by the review fee	✓	✓
	<b>Plan content requirements include:</b>		
	data to demonstrate that the undisturbed buffer area, together with the enhanced vegetative plantings and any required BMP, retards runoff, prevents erosion, and filters non-point source pollution to the equivalent of the full undisturbed 100-foot buffer area, which shall be deemed to achieve a 75 percent reduction in sediments and a 40 percent reduction in nutrients	✓	✓
	Location of the components of the CBPA including the 100-foot buffer area component of the RPA	✓	✓
	Location and nature of the proposed encroachment into the buffer area including type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious surfaces; and existing private water supply systems or sewage disposal systems to include reserve drain field sites	✓	✓
	Type and location of proposed BMPs, if necessary, to mitigate the proposed encroachment	✓	✓
	Location of existing, on-site vegetation, including the number and type of trees and other vegetation, to be removed in the buffer to accommodate the encroachment or alteration	✓	✓
	Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal as well as erosion and runoff control, in accordance with the <i>Riparian Buffers Modification and Mitigation Guidance Manual</i> , approved by Chesapeake Bay Local Assistance Board on September 15, 2003	✓	✓
	<b>Hydro geological component with:</b>		✓
	existing topography, soils, hydrology and geology of the site and adjacent lands		✓
	impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands		✓
	disturbance or destruction of wetlands and justification for such action		✓
	disruptions to existing hydrology including wetland and stream circulation patterns		✓
	description and source location of proposed fill material		✓
	estimation of predevelopment and post-development pollutant loads in runoff		✓
	estimation of percent increase in the on-site impervious surface and types of surfacing materials used		✓

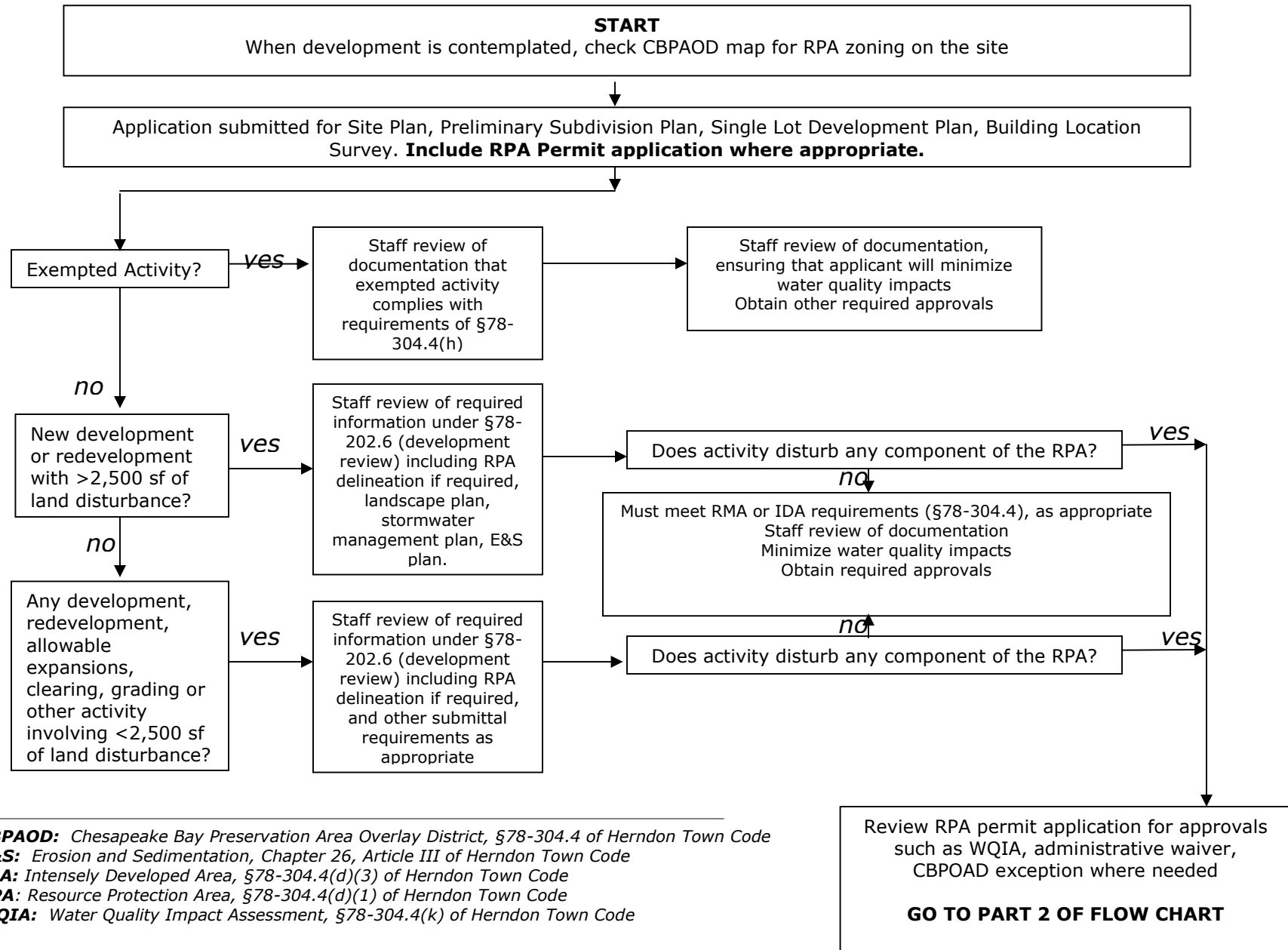
<b>Reference 3: Requirements for Submittal of a Water Quality Impact Assessment                      under §78-304.4 of the Herndon Zoning Ordinance                      FOR USE BY PREPARERS and REGULATORY REVIEWERS</b>			
✓		Minor	Major
	percent of site to be cleared for the project		✓
	anticipated duration and phasing schedule or construction project		✓
	acquisition of all requisite permits from all applicable agencies necessary to develop the project		✓
	<b>Proposed mitigation measures for the potential hydro geological impact, such as:</b>		✓
	erosion and sediment control concepts (minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspections)		✓
	Proposed stormwater management system		✓
	creation of wetlands to replace those lost		✓
	minimizing cut and fill		✓
	Identification of existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay preservation areas		✓
	Identification of the natural processes and ecological relationships inherent in the portion of the CBPA located on the site and an assessment of the impact of the proposed use and development on these processes and relationships		✓



Reference 4: Required Approvals for Development Activity Proposed On Individual Lots Zoned for Single Family Use (Detached or Duplex Homes) that Contain Zoning for Resource Protection Areas										
		****SITE SPECIFIC RPA DELINEATION MUST BE SHOWN**** (even if no RPA encroachment is proposed)						New RPA Encroachment on Lots Created\5:		
Feature Requested in Resource Protection Area		Single Lot Devel. Plan	Building Location Survey	Heritage Preservation Review\1	Building Permit	House Location Survey	Certif. of Occupancy	before 10/1/89 CBPA Administrative Waiver\2	10/1/89 to 2/10/04 CBPA Administrative Waiver\3	on or after 2/10/04 CBPA Exception\4
A	Patios, detached decks							not permitted		TC approval required through public hearing process using criteria in Section 78-304.4(l)  only for:  relief from restrictions on:  uses, removal of vegetation, road construction, new or expanded water
B	Private Roads and Driveways\7							may be permitted by the zoning administrator, without a waiver, in RPA as long as it meets the specified criteria. If not, a CBPA exception is required.		
C	Fences			✓				permitted		
D	Accessory building up to 150 sf			✓				not permitted		
E	Addition if footprint is less than 150 sf, attached decks of any size, certain walls		✓	✓	✓			not eligible for waiver in inner 50' of buffer. In outer 50' of buffer, mitigation necessary; WQIA\6 necessary		
F	Accessory structure if footprint is less than 150 sf							not permitted		
G	Addition if footprint is 150 sf to 749 sf		✓	✓	✓			not eligible for waiver in inner 50' of buffer. In outer 50' of buffer, mitigation necessary; WQIA\6 necessary		
H	Accessory structure if footprint is 150 sf to 749 sf		✓	✓	✓			not permitted		
I	Addition if footprint is 750 sf or more	✓		✓	✓			not eligible for waiver in inner 50' of buffer. In outer 50' of buffer, mitigation necessary; WQIA\6 necessary		
J	Accessory structure if footprint is 750 sf or more	✓		✓	✓			not permitted		

<b>K</b>	Principal structure (including replacement of principal structure)	✓		✓	✓	✓	✓	not eligible for waiver in inner 50' of buffer. In outer 50' of buffer, mitigation necessary; WQIA\6 necessary	dependent facilities, SWM facilities
<b>L</b>	Certain retaining walls (per building code)	✓		✓	✓			not eligible for waiver in inner 50' of buffer. In outer 50' of buffer, mitigation necessary; WQIA\6 necessary	
<b>M</b>	Land disturbance of 2,500 sf or more, with or without any construction	✓						not eligible for waiver in 50' buffer; otherwise, mitigation necessary. Justification needed, buffer encroachment to be minimized. WQIA needed.	
1/Heritage Preservation Review occurs for those properties located within a Heritage Preservation Overlay District.									
2/ Administrative waiver may be granted by Zoning Administrator in accordance with §78-304.4(m)									
3/ additional conditions apply for these lots; see §78-304.4(j)(7)									
4/ Exceptions allowed only for CBPA provisions governing uses and additional performance criteria									
5/ Encroachment permitted only if the RPA results in a loss of buildable area for new homes or new principal structures.									
6/WQIA = water quality impact assessment in accordance with §78-304.4(k)									
7/ may require a Right-of-Way Permit from the Department of Public Works									

# General flowchart for compliance with submission requirements, part 1



## General flowchart for compliance with submission requirements, part 2

